

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

[Plaintiff(s) Name],

Plaintiff(s),

v.

Case No. [2-digit Case Year]-CV-[5-Digit
Case No.]-DT

[Defendant(s) Name],

Defendant(s).

_____ /

SAMPLE
RULE 16 CASE MANAGEMENT CONFERENCE AND SCHEDULING ORDER

This case management order has been prepared after the court conducted a telephone status conference with the parties on July 9, 2003. The following dates will apply.

<u>DEADLINE SUMMARY</u>	
Amendments	9/17/03
Preliminary Witness List	7/25/03
Plaintiff's Expert Reports	9/24/03
Defendant's Expert Reports	10/24/03
Final Witness List	11/7/03
Discovery Cutoff	11/21/03
Dispositive Motion Cutoff	12/22/03
Joint Final Pretrial Order	3/22/04
Final Pretrial Conference	3/29/04
Jury Instruction Due Date	3/22/04
Jury Trial	MARCH/APRIL 2004

IT IS HEREBY ORDERED:

1. AMENDMENTS:

Any motion to add an allegedly indispensable party under F.R.Civ.P. 19 must be filed not later than 9/17/03 or be deemed waived.

2. EXCHANGE OF WITNESS LISTS:

In order to properly orient each party to the expected trial position of the opposing side, each party must deliver a preliminary witness list, to the opposing party and file a copy with the court on or before **7/25/03**.

Each party must deliver a final witness list, to the opposing party and file a copy with the

court on or before **11/7/03**. The list must constitute a full good-faith disclosure of each witness who is both known to the party and intended at that time to be called at trial. In the event that a party desires to supplement the list with additional witnesses, the party may do so by 11/7/03; after that date supplementation may be done by stipulation or, if a stipulation is not forthcoming, with a motion supported by a showing of good cause. Witness lists must include after each witness's name an informative synopsis (one or two sentences) outlining the witness's expected testimony.

3. EXPERT REPORTS REQUIRED BY RULE 26(a) (2) (B) F.R.CIV.P:

The report of a proposed expert witness for Plaintiff must be provided not later than **fifty-six days (eight weeks)** before the end of discovery. Plaintiff's expert must be available and prepared for deposition within **fourteen days** after the date the expert report is provided (i.e., not later than six weeks before the end of discovery).

The report of any proposed expert witness for Defendant must be provided not later than **twenty-eight days (four weeks)** before the end of discovery. Defendant's expert must be available and prepared for deposition within **fourteen days** after the date the expert report is provided (i.e., not later than two weeks before the end of discovery).

In the event that a 26(a)(2)(B) report and deposition availability is not provided within these time deadlines, the proposed expert testimony will not be admitted at trial.

4. DISCOVERY DEADLINE:

The deadline for completing (not simply scheduling) court-supervised discovery is **11/21/03**. Written discovery demands must be served such that responses are due before the above cut-off date in accordance with the time provided in the Federal Rules. Extensions of court-supervised discovery are not ordinarily granted in the absence of unusual circumstances. Although unsupervised discovery is sometimes agreed to among counsel, court deadlines are

not changed based upon mere agreement.

5. DISPOSITIVE MOTION DEADLINE:

The deadline for filing pretrial motions requiring extensive briefing and consideration (including motions under Rule 56 and those challenging a purported expert under *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 U. S. 579 (1993)) is **12/22/03**. Please carefully note *Motion Guidelines, section 14, below*.

6. JOINT FINAL PRETRIAL STATEMENT:

Plaintiff counsel must submit a proposed joint final pretrial order pursuant to Local Rule 16.2 to chambers on or before **3/22/04**.

7. FINAL PRETRIAL/SETTLEMENT CONFERENCE:

The court will conduct in chambers a Final Pretrial and Settlement Conference under the provisions of Rule 16(d), Federal Rules of Civil Procedure, on **3/29/04, at 2:00 p.m.**

a) Demand and response. Plaintiff is hereby ORDERED to transmit a clear, written and good faith settlement demand insuring that it is received by defendant not later than 14 days before the conference. Defendant is ORDERED to respond to that demand in writing, clearly and in good faith, insuring that it is received by plaintiff not later than 7 days before the conference. Further communication is strongly encouraged.

b) Attendance. The following persons and entities are hereby ORDERED to personally attend the conference:

- Trial counsel for each party;
- All parties who are natural persons;
- A representative on behalf any other party;
- A representative of any insurance carrier which has undertaken the prosecution or defense of the case and has contractually reserved to itself the ability to settle the action.

A "representative" must possess full authority to engage in settlement discussions and to agree upon a full and final settlement. "Full authority" is measured by the last demand of plaintiff and authority must extend at least to that level.

The requirement that each party "personally attend" is not satisfied by trial counsel professing to have full authority attending on behalf of the client. A party being available by telephone does not equal "personally attending" the conference. *A party who disregards these conference requirements risks fines, costs, fees or the foreclosure of witnesses, loss of claims or defenses under Fed.R.Civ.P. 16(f) and Local Rule 16.1.*

8. MOTIONS IN LIMINE:

Motions in Limine must be filed on or before **3/22/04**. The court will not receive Motions in Limine on the day of trial without good cause shown for the delay. "Motions in Limine," as used here, indicates the relatively uncomplicated cautionary motions often seen at the commencement of a case. A motion, even if labeled as one "in limine," which will require extensive briefing and consideration (such as a *Daubert* motion; see section 5, above) must be filed in accordance with the deadline for filing dispositive motions.

9. JOINT JURY INSTRUCTIONS:

a) Plaintiff's counsel is hereby ORDERED to convene a meeting of the attorneys (see, *Fed.R.Civ.P. 51*); all counsel are ORDERED to confer prior to trial to discuss the indispensable "core" jury instructions in a good faith effort to narrow the areas of dispute and with a view toward reaching agreement as to an acceptable form. The court intends to deliver its own standard introductory and concluding instructions, but intends to instruct the jury at the beginning of the case as to elements of proof. The object of the instruction conference, then, should include principally these matters:

- 1) *The elements of the plaintiff's claim;*
- 2) *The elements of any affirmative defenses;*
- 3) *Specialized case-specific instructions, e.g., concerning unusual factors in*

this case;

- 4) *A form of the verdict, usually incorporating logically sequential questions based on the elements of proof.*
- b) Plaintiff's counsel is ORDERED to file with the court two copies of a unified set of stipulated proposed jury instructions no later than **3/22/04**.
- c) Instructions are to be produced on paper and on one 3½" computer diskette written with WordPerfect or compatible software, the diskette to be submitted with the "judge's copy" only. Each instruction is to be typed, double-spaced, and commence on a new page. Reference to the party proposing an instruction, instruction titles, or references to case or other authority should be placed near the top or bottom margin of the page.
- d) If counsel are unable or unwilling to fully agree as specified herein, plaintiff's counsel is ORDERED to so inform the court in writing by the deadline for the filing of instructions, listed above and to file all agreed-on and contested instructions. The court will conduct an expedited in-person conference on very short notice.

The court ORDERS objecting counsel to supply opposing counsel in writing the reason(s) for any such objections as to each proposed instruction so that each contested instruction can be followed by a statement of case law, statutory or other basis of support, and a verbatim restatement of the basis given for any objection.

10. EXHIBITS; EXAMINING, PRE-MARKING AND LISTING:

Plaintiff's counsel is hereby ORDERED to convene a meeting of the attorneys at which all counsel are ORDERED to meet and:

- a) identify any objections as to authenticity, foundation relevance, etc., of *each* proposed exhibit and deposition. Each party's exhibits and depositions must then be listed separately, first those as to which there are no objections, and second those as to which there are objections.

"Exhibits" includes both those items which the parties fully intend to introduce at trial, and those which the parties simply *might* introduce. "Depositions" includes redacted portions thereof intended for trial use.

Agreed-upon exhibits and depositions, identified on a separate listing and prepared for submission to the court as explained more fully below, will be considered admitted at the outset of trial and may be used by either party at any time.

b) supply to opposing counsel in writing the reason(s) for the withholding of such stipulation or assertions of such objections as to each exhibit proposed by the opposing party as to which counsel has objected or withheld stipulation.

c) arrange to pre-number all exhibits (both those agreed to and those objected to).

EXHIBITS MUST BE MARKED BY COUNSEL IN ADVANCE OF TRIAL. Court time cannot be used for the labeling of exhibits and the court's reporter will not label exhibits for counsel. Plaintiff will use exhibit numbers beginning with 101, and defendant will use numbers beginning with 501 (although in the event of an extraordinary number of exhibits or for other reasons, counsel may agree upon a reasonable alteration to the 101/501 numbering system).

11. FILING EXHIBIT LISTS AND OTHER MATTERS:

a) Counsel for plaintiff and for defendant each are ORDERED to file with the court by

3/22/04.

- i) a trial brief,⁸ and
- ii) a list of your *proposed* exhibits, the admissibility of which has been objected to by the opposing party, and the reason (supplied by opposing counsel) for the objection, and
- iii) proposed findings of fact and proposed conclusions of law if there are any issues to be decided by the court alone.

⁸ A good trial brief will do more than merely restate the case summary contained in the JFPTO, and assist the court by, for example, outlining counsel's intended position on anticipated evidence or witness problems.

b) Counsel for plaintiff is ORDERED by the same date;

- i) to file with the court a list of exhibits, the admissibility of which is stipulated to by both parties, and a list of the depositions similarly stipulated to, and
- ii) to submit to the court in chambers copies of the exhibits themselves, unless bulk or other considerations make such submission impractical.

12. JURY TRIAL SCHEDULE:

This case is assigned for trial on the court's trailing docket for **MARCH/APRIL 2004**.

The court will prepare a printed docket containing the civil cases to be heard, in order, and the names and telephone numbers of the attorneys responsible for each case on the docket. The docket should be in the hands of counsel by about one month before the docket begins. It is the responsibility of counsel to be in contact with each other to determine their place on the docket, as cases ahead of them may settle and a later case may thereby move up the list. The case must be prepared for jury selection *as early as the first or as late as the last business day of that period*. Please make whatever adjustments that may be required in your trial and vacation schedules now or as soon as possible.

The court uses the "Strike" system of jury selection. You may contact Case Manager Lisa Teets (313-234-5522) if you desire further information on this selection method.

13. DEPOSITION USE AT TRIAL:

Videotaped depositions generally are not used during trial without permission of the court obtained substantially in advance of trial. The court generally requires rigorous editing of any tape before permitting such to be used.⁹

The court expects that any deposition sought to be used at trial, including a discovery

⁹ The court does not seek to restrict "high-tech" evidence presentation as such. Experience shows however that videotape depositions often are characterized by slowly-paced questions and other delays. There is too often questioning beyond the proper scope (i.e., re-cross, supplementary redirect, etc.). They are more difficult to edit than printed depositions. Finally, any problems in presentation are beyond the ability of the court to control.

deposition, will meet ordinary trial limitations, and will be limited to *direct examination, cross examination on matters raised in direct, and possibly redirect*. See, Fed. R. Evid. 611.

Extended rounds of questions and answers must be redacted unless the court is persuaded that unusual circumstances require the reading of such extended questioning.

14. MOTION GUIDELINES:

a) Concurrence. Before filing *any* motion, read and closely follow Rule 7.1(a)(2) in seeking concurrence and specifically reporting negative results.

b) Form.

i) Face sheets to be color-coded. Please print the face sheet on the *judge's copy only* as follows: BLUE for the moving party's brief; RED for the non-moving party's response brief; and GREY for any reply.

ii) Binding; avoid top-punching. Please bind the judge's copies of briefs and appendices with a staple in the upper left corner unless more than 20 pages are presented, in which case please bind in "book form" along the left margin. The "text" of a brief as discussed in Local Rule 7.1(c)(3) includes things such as the case summary and argument, but does not apply to the statement of facts, table of contents, index of authorities, etc.

iii) Avoid "Notice of hearing." The court will set its own hearing dates, thus it is a waste of time and paper to include a "notice of hearing" form in your motion. Such notices are not required by Eastern District Local Rules, and actively discouraged by this chambers.

c) Time of Filing. Dismissal Motions may be filed at any time. Summary Judgment Motions usually are filed closely following the end of discovery; those filed earlier often must wait for discovery to be completed.

d) Briefing and Hearings. When a motion is filed, the court may often set dates for responses and replies and announce a date for argument. Such a notice, however, is not always sent; in the absence of such specified dates, counsel are governed by the Local Rules. An oral argument date is an internal court scheduling device, and not a guarantee that argument will be conducted. A motion may be decided on the briefs only, sometimes just days before argument. Short extensions of hearing dates may be granted by Case Manager Lisa Teets.

e) Hearings by telephone. The court will entertain requests to conduct some hearings by conference call and other reasonable suggestions that may reduce time, expense, and inconvenience require to resolve a case.

f) Rule 56 Motion Standards. Before filing or responding, counsel must be familiar with the Rule 56 standards as set forth by the United States Supreme Court in the "Celotex trilogy."¹⁰ However, avoid lengthy boilerplate recitations of those standards or lengthy "string cites" in support of well-established principles. On the merits, please focus your analysis on a few well-chosen cases, preferably recent and from controlling courts. You are encouraged to supply the court with copies of your main cases, with the relevant passages(s) highlighted and tabbed. If you cite an opinion published only in a specialty reporter, submit a copy of the case itself. Copies of cases are to be submitted in a separate "case appendix" beginning with an index.

g) Statement of Material Facts, format. A "Statement of Material Facts" should be included as part of your brief, but will not count against the briefing page limits. The "Statement" should consist of numbered paragraphs describing - with specific citations to the evidentiary record - the material facts of the case. The response should contain corresponding numbered paragraphs that admit, or provide alternative facts, to that proffered in the motion. A response may include additional numbered paragraphs that provide additional material facts not raised in the motion. The factual record should be contained in a "fact appendix." Begin the appendix with an index, followed by the tabbed exhibits. Submit enough of a document or deposition to allow it to be read in context, but avoid unnecessarily submitting things *in toto*. Documents and exhibits such as interrogatories, deposition and affidavits provided in the appendix should be

¹⁰ *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). See also *Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989); and Schwarzer, *Summary Judgment under the Federal Rules; Defining Genuine Issues of Material Fact*, 99 F.R.D. 465 (1984).

highlighted to focus attention on your point.

Appendices of more than 20 pages should be separately bound and include a cover sheet identifying the motion to which they are appended. All pages from the same deposition or document should be at the same tab.

MOTION FORMAT SUMMARY: Present a Rule 56 motion with

- (1) a tabbed "Fact Appendix," that
 - (a) begins with an index and is followed by
 - (b) tabbed exhibits
- (2) a brief, including a Statement of Material Facts; and perhaps
- (3) an indexed, tabbed "case appendix."

IT IS SO ORDERED.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

August ____, 2003